

Subcommittee on Interim Strong Mayor

Staff Briefing on Independent Budget Analyst
by James Ingram

The Subcommittee requested research regarding the issue of the Independent Budget Analyst.

Staff Analysis

San Diego's Independent Budget Analyst was one of the institutions produced by Prop F. Since the office is established by Article XV of the Charter, its charter status will cease to exist when Article XV sunsets on December 31, 2010. The terms of Article XV granted the City Council authority to determine most of the details of this office (Section 270(f), and the Mayor is not allowed to veto the Council's actions in regard to it (Section 280(a)(1)).

The IBA's office was initially conceived by the 1999 charter review committee that ultimately helped to bring Prop F to the ballot. The members of that committee envisioned the City following the federal model, wherein the executive branch is equipped with the Office of Management and Budget (OMB), whose projections and analyses the legislative branch may check through the work of the Congressional Budget Office (CBO).

At present, the Office of Independent Budget Analyst does not appear to possess as broad a mandate as other cities authorize their equivalent officer to hold. The model of a more expansive office would appear to be Los Angeles' Chief Legislative Analyst (CLA). This office was not created by charter amendment. In fact, the creation of the CLA's office dates back to a 1950s-era disagreement between the Mayor and Council. The Mayor wanted to fire Los Angeles' Chief Administrative Officer (CAO), and many Council members did not, and thus the Council hired the controversial CAO as the first CLA.

Los Angeles' CLA is present in that city's charter today only by omission. The charter expressly exempts the CLA's office from the provisions for Mayoral appointment and removal of the general managers of other city departments (with Council approval), and implicitly exempts that office from civil service. The details of the CLA's office are a matter of the Administrative Code, although the Mayor did hold veto authority over the ordinance that established it.

Los Angeles' CLA has many functions, but probably the most important is its role with respect to the city budget. The importance of the budget has also led other cities to create a budget office that is independent of the Mayor's office. New York City, for example, authorizes a committee consisting of one Council member, one of its five Borough Presidents, the Comptroller and the Public Advocate to appoint a Director to lead the Independent Budget Office (IBO). The IBO has a budget that must be at least 10% as much as is allocated for New York City's OMB, and holds extensive reporting authority with regard to the city's different budgets. New York City provides separately that the City Council will be able to retain and compensate professional staff to review the city's finances and legislation. In a sense, New York City separates the functions of the Los Angeles CLA into two different staffs.

Like Los Angeles and New York City, Detroit and Philadelphia are also large strong mayor cities. These two cities do not require in their charters that their city

legislatures are equipped with as much budgetary and policy making staff support as are the councils of LA, NYC or San Diego.

Below are the relevant charter and municipal/administrative code sections for Detroit, Los Angeles, New York City and Philadelphia. If the Subcommittee would like, staff can survey all of the largest strong mayor cities in the country, as well as the largest California cities for further examples. However, it seemed appropriate to present the preliminary results of our research, since this item has come up for discussion under the work-plan of this Subcommittee.

Relevant Charter and Municipal/Administrative Code Sections from Other Cities

Detroit

"Sec. 4-109. Investigation.

The city council may make any investigations into the affairs of the city and the conduct of any city agency.

Sec. 4-110. Investigative powers.

The city council may subpoena witnesses, administer oaths, take testimony and require the production of evidence in any matter pending before it or any of its committees. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the city council shall apply to the appropriate court.

Sec. 4-111. Council clerk.

The city clerk shall serve as the city council's clerk and shall keep a record of all its ordinances, resolutions, and other proceedings and perform such other duties as it may provide.

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Sec. 4-120. Council personnel.

The city council may appoint a staff, exempt from article 6, chapter 5 of this Charter.

Sec. 4-121. Special counsel.

The city council may obtain the opinion or advice of an outside attorney in any matter pending before it. Where there exists a conflict of interest between the city council and another branch of government, the city council has the authority to retain an attorney licensed to practice law in Michigan who shall represent the city council in legal proceedings. Such attorney shall not represent the city as a municipal corporation in any legal proceeding."

Los Angeles

Charter Sections

"Sec. 508. Appointment and Removal of Chief Administrative Officers.

(a) Applicability. Subsections (a) through (e) of this section shall apply to all chief administrative officers except the Chief of Police, the Executive Officer of the City Ethics Commission, the Executive Director of the Employee Relations Board, the general managers of the Fire and Police Pensions and the Los Angeles City Employees Retirement System, and the general managers of the Proprietary Departments. The following shall also be considered chief administrative officers for the purposes of this section: the Treasurer; the Executive Director of any City

commission or agency created by ordinance that performs regulatory functions; and the executive director of all other ordinance created commissions or agencies unless the ordinance creating the commission or agency provides otherwise. The provisions of this section shall not apply to the Chief Legislative Analyst."

"ARTICLE X: CIVIL SERVICE

Sec. 1000. Applicability.

The provisions of this Article shall apply to all employees of the City, except for those specifically exempted in Section 1001.

Sec. 1001. Exemptions.

Each of the following positions shall be exempt from this Article:

(a) Exempt Positions.

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(3) All chief administrative officers of the City's departments and offices and the Directors of the Public Works' Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services.

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(7) Positions established by the Council for the purpose of assisting the members of the Council in the performance of their duties, except for clerical personnel."

Administrative Code Sections

"CHAPTER 6

CHIEF LEGISLATIVE ANALYST

ARTICLE 1

CREATION OF THE OFFICE

Sec. 20.100. Designation of Office.

There is an office within the legislative branch of the government of the City of Los Angeles known as the Office of the Chief Legislative Analyst, hereinafter referred to in this chapter as the "Office", that shall provide technical staff assistance to the Council, its various Committees, and individual members of Council in their work of legislation.

ARTICLE 2

CONTROL AND MANAGEMENT

Sec. 20.105. The Chief Legislative Analyst.

Said Office is under the control and management of the Chief Legislative Analyst.

Sec. 20.106. Appointment and Removal of the Chief Legislative Analyst.

The Chief Legislative Analyst shall be exempt from Article X of the Charter, and shall be appointed by and may be removed by a two-thirds vote of all members of the Council.

ARTICLE 3

POWERS AND DUTIES IN GENERAL

Sec. 20.110. Council Services.

Subject to such rules, regulations and direction as the Council may prescribe, the Chief Legislative Analyst shall:

(a) Perform duties of investigation and analysis for, and recommendation to the Council, its Committees and its individual members in their work of legislation.

(b) Upon request of a Committee Chairman, provide a technical staff member as a consultant to the involved committee, to conduct such investigations, prepare such reports, schedules, analyses, and recommendations and provide technical assistance and information for the committee as may be necessary or requested.

(c) Serve on such Ad Hoc or Advisory Committees as the Council may direct.

(d) Prepare an impartial summary of all City Charter amendments or revisions appearing on the ballot, as provided in the City's Election Code.

(e) Assist the Council, its Committees including the Rules Committee, or individual members of Council in matters relating to their budgets, office space, personnel, and office administration as requested.

(f) Subject to Council instruction and approval, prepare and administer the annual budget for the Council with such assistance from the City Clerk as may be needed.

(g) Administer public information functions for the Council.

(h) Serve on the Ballot Simplification Committee.

(i) Have full charge and control of all work, duties, and powers of the Office, be responsible for the administration of its affairs, and issue instructions to the employees of the Office in line with their duties.

(j) Keep the Council informed as to the actions of the Office.

(k) Perform such duties as may be imposed by the Council.

Sec. 20.111. Legislation and Intergovernmental Relations.

The Chief Legislative Analyst shall:

(a) Coordinate the development of legislative policy for the Council, and monitor and report to the City Council on the implementation and results of the City's Legislative Program at the State, Federal and Local levels of government.

(b) Serve as "Governmental Affairs Representative" for the Council.

Sec. 20.112. Budget Analysis.

The Office shall assist the Council and its Committees in their review and approval of the Mayor's proposed budget. Prior to and during this process, the Office will provide the Council and the Committees with such reports, schedules and analyses as directed."

New York City

"§ 47. Legislative professional staff. Within appropriations for such purpose, the council shall establish a structure within the City Council and retain professional staff to review and analyze proposed budgets and departmental estimates, requests for new taxes or changes in taxes, budget modifications, capital borrowings and mayoral management reports. Such staff shall assist the committees of the council and Council Members in their analysis of proposed legislation and in review of the performance and management of city agencies."

"§ 259. Independent budget office. a. There shall be an independent budget office to be headed by a director who shall be appointed upon the recommendation of the independent budget office advisory board, by a special committee convened for this purpose. Such committee shall consist of the comptroller, the public advocate, a borough president chosen by the borough presidents, and a council member chosen by the council, and shall act by majority vote. The director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties assigned by this chapter. The term of office of the director first appointed shall expire on August first, two thousand, and the terms of office of directors subsequently appointed shall expire on such date in each fourth year thereafter. Any individual appointed to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of the term. An individual serving as director at the expiration of a term may continue to serve until a successor is appointed.

b. The appropriations available to pay for the expenses of the independent budget office during each fiscal year shall not be less than ten percentum of the appropriations available to pay for the expenses of the office of management and

budget during such fiscal year. The director shall appoint such personnel and procure the services of such experts and consultants, within the appropriations available therefor, as may be necessary for the director to carry out the duties and functions assigned herein. Such personnel and experts shall perform such duties as may be assigned to them by the director.

c. The director shall be authorized to secure such information, data, estimates and statistics from the agencies of the city as the director determines to be necessary for the performance of the functions and duties of the office, and such agencies shall provide such information, to the extent that it is available, in a timely fashion. The director shall not be entitled to obtain records which are protected by the privileges for attorney-client communications, attorney work product, and material prepared for litigation.

d. There shall be an independent budget office advisory committee consisting of ten members appointed jointly by the comptroller and the public advocate for five year staggered terms. Of the members originally appointed, two shall serve until the thirty-first day of March, nineteen hundred ninety-nine, two shall serve until the thirty-first day of March, two thousand, two shall serve until the thirty-first day of March, two thousand one, two shall serve until the thirty-first day of March, two thousand two and two shall serve until the thirty-first day of March, two thousand three. The members shall all be individuals with extensive experience and knowledge in the fields of finance, economics, accounting, public administration and public policy analysis, including at least one former director of the New York city office of management and budget or of a comparable office in another local government jurisdiction in the United States; one nationally recognized expert in the fields of budget theory and the budgetary process; one former director of the New York state division of the budget or of a comparable legislative or executive office in another state government; one dean or director or former dean or director of a graduate school of business administration located in New York city; one dean or director or former dean or director of a graduate school of public administration or public affairs or public policy located in New York city; one chair or former chair of a graduate economics department of a college or university located in New York city; one officer or former officer of, or economic advisor of, a labor union; one officer or former officer of, or economic advisor to, a business corporation; one officer or former officer of a civic or public interest advocacy organization involved in budgetary matters; and one officer or former officer of a human services advocacy organization involved in budget matters. No member may be reappointed to consecutive terms. Vacancies occurring because of the expiration of terms shall be filled promptly on the recommendation of the members of the committee whose terms are not expiring. Vacancies occurring otherwise shall be filled promptly on the recommendation of the remaining members of the committee. The members of the committee shall receive no compensation but shall be reimbursed for their necessary expenses. The committee shall at its first meeting in every even numbered year elect, from among its members, a chair and vice-chair who shall serve until the thirty-first day of March of the next even numbered year."

"§ 237. Report of independent budget office on revenues and expenditures. On or before the first day of February, the director of the independent budget office shall publish a report, for the ensuing fiscal year, with respect to expected levels of revenues and expenditures, taking into account projected economic factors and the proposals contained in the preliminary budget submitted by the mayor for such fiscal year. Such report shall also include a discussion of city budget priorities, including alternative ways of allocating the total amount of appropriations, expenditures and commitments for such fiscal year among major programs or functional categories

taking into account how such alternative allocations will meet major city needs and effect balanced growth and development in the city."

"§ 246. Report of independent budget office on preliminary budget. On or before the fifteenth day of March, the director of the independent budget office shall publish a report analyzing the preliminary budget for the ensuing fiscal year."

"§ 252. Report of independent budget office on executive budget. On or before the fifteenth day of May, the director of the independent budget office shall publish a report analyzing the executive budget for the ensuing fiscal year."

"§ 211. Capital budget borough allocations. a. Borough allocation. Five percent of the appropriations, funded by debt supported by city tax levy funds and state and federal funds over which the city has substantial discretion, proposed in the executive capital budget for the ensuing fiscal year, except any lump sum appropriation for school construction or rapid transit proposed to be made to public authorities established pursuant to the provisions of state law, shall be allocated among the boroughs by a formula based on an equal weighting of factors relating to population and geographic area, and shall be known as the capital budget borough allocation. Such formula shall be established by local law, but in any fiscal year for which no such local law is effective such amount shall be allocated among the boroughs on the basis of the average of (i) each borough's share of the total population of the city, and (ii) each borough's share of the total land area of the city.

b. Preliminary borough allocations; initial borough president notification. Concomitantly with the submission of the preliminary capital budget and preliminary certificate, the mayor shall inform each borough president of the portion of the executive capital budget for the ensuing fiscal year and of the executive capital budgets for each of the three succeeding years that, pursuant to the formula required by subdivision a of this section, would be allocated to each borough if the amount of the appropriations proposed in the executive capital budget for each of such fiscal years were the same as the maximum amounts of appropriations for such years which the mayor anticipates to be certified in the preliminary certificate issued in accordance with section two hundred thirty-five. The amount of such portion shall be known as the preliminary capital budget borough allocation.

c. Borough president proposals. 1. Each borough president, during the consultations required by section two hundred forty-four, shall submit to the mayor, in such form as the mayor shall prescribe, proposed capital appropriations in an amount not exceeding that borough's allocation of the capital budget borough allocation as certified by the mayor to the borough presidents during such consultations. The timing of such certification shall allow sufficient time for such consultations and for meeting the deadlines established by section two hundred forty-nine. Each such proposed appropriation shall be accompanied by the following information:

(a) for each such proposed appropriation for construction of a capital project, the estimated annual cost to operate and maintain the facility to be constructed pursuant to such appropriation when construction is completed. Such estimates shall be prepared in accordance with the standards established for this purpose pursuant to section two hundred twenty-one of this chapter and shall be certified by the director of the office of management and budget. In the event that a borough president and the director of management and budget do not agree on such estimate for a particular project, such director and the director of the independent budget office shall jointly certify an estimate for such purpose;

(b) for each such proposed appropriation for the planning and design of a capital project, (i) the estimated cost of the construction of the project, and (ii) the fiscal

year in which the borough president intends to propose an appropriation for the construction of the project, if no technical problems regarding the viability of the project are identified during planning, site selection or design;

(c) the total of all appropriations which will be necessary during the three ensuing fiscal years to provide for the construction of projects for which planning and design appropriations are being proposed.

2. If a borough president proposes an appropriation for the construction of a capital project, the appropriation must provide for the total amount estimated to be necessary for the completion of the project. If such a proposed appropriation for the construction of a capital project is for an amount which is less than the amount that the office of management and budget estimates to be necessary for the completion of the project, the borough's capital budget borough allocation in any future year in which additional appropriations are necessary for the completion of the project shall be reduced by the amount of such additional appropriations.

3. If the total appropriations necessary, during any of the ensuing three fiscal years, to provide for the construction of (i) projects for which the borough president is proposing appropriations for planning and design, and (ii) projects for which appropriations were previously made for planning and design on the recommendation of the borough president, is greater than the capital budget borough allocation anticipated to be available during such years based on the certificate issued pursuant to paragraph sixteen of section two hundred fifty of this charter, then the borough president shall submit for inclusion in the executive budget a list of the projects requiring construction appropriations during such year, in priority order.

4. If the estimated annual cost to operate and maintain the capital projects being proposed for construction by a borough president is greater than the amounts dedicated to such expense budget purposes from the expense budget borough allocation and the capital budget borough allocation expense budget contingency projected to be available to the borough president in one or more ensuing fiscal years then such proposed appropriations may only be included by a borough president in the capital budget with the concurrence of the mayor.

d. The mayor shall include the proposed appropriations submitted by the borough presidents in accordance with subdivision c of this section in the executive capital budget provided however, that the mayor may also include such comments and recommendations relating to such proposals as the mayor deems appropriate."

Philadelphia

"Section 2-105

Employment of Counsel.

In the event the Law Department declines to advise or render legal services to the Council in any matter and whenever the Council is conducting an investigation relating to the executive and administrative branch of the City government, the Council may employ and fix the compensation of counsel of its own selection to handle such matter or to assist in conducting such investigation. In all other cases it shall obtain legal advice and services exclusively from the Law Department.

ANNOTATION

Sources: No specified source.

Purposes: The Law Department is designated as counsel for the Council as well as for the executive branch of the government. However, provision is made for Council obtaining its own counsel in the event the Law Department declines to act or whenever Council is making an investigation of the executive branch of the

government. Under such circumstances Council is assured independence from the executive branch in order to enable it to function properly."

"Section 2-403

Employment of Personnel, Expenses and Cooperation of City Departments and Agencies.

For the purpose of conducting inquiries and investigations the Council by resolution may employ, or authorize the employment by its committees, and fix the compensation of counsel, experts and employees and authorize such other expenditures as it deems necessary, but a limit of the total cost shall be stated which shall not be exceeded except by vote of the Council authorizing additional amounts. However, the Council or any of its committees may, with the consent of the head of any department, board or commission of the City, utilize the services, information, facilities and personnel of such department, board or commission.

ANNOTATION

Sources: United States Code, Title 2, Section 196; Title 29, Section 194.

Purposes: The employment of personnel by the Council for any of its committees conducting inquiries and investigations is authorized for the regular staff of Council will frequently be inadequate for this special work. Thus the Council will be able to engage lawyers, accountants, scientists, and additional clerical help to meet the needs of any particular investigation or inquiry. To prevent the incurring of unlimited costs, Council is required to set a limit of the total expenditures to be made for any investigation or inquiry. This limit may be increased from time to time by the Council. Personnel and facilities of administrative agencies may be utilized, but only with the consent of the head of the agency."